

PATENTABILITY ARGUMENTS

A. Claim Objections Should be Withdrawn

The Examiner has objected to claims 55 and 56 because the claims were reciting two acronyms, SAVI and RACE, without spelling out the meaning of the acronyms. In response to the Examiner's objection, claims 55 and 56 are amended so that both acronyms, SAVI and RACE, are spelled out.

The Examiner has objected to claims 58-74 under 37 CFR 1.75(c) as being in improper form for improper dependency. In response to the Examiner's objection, claim 58 is amended. Amended claim 58 depends on independent claim 57. As a result of this amendment, each of claims 59-74 is a multiple dependent claim, which properly depends either on independent claims 53 or 57, or dependent claims 54, 55, 56 or 58.

B. The Rejections Under 35 U.S.C. § 112, First Paragraph, Should Be Withdrawn

The Examiner has rejected claims 45-50 under 35 U.S.C. § 112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. The rejection is moot in view of the fact that claims 45-50 are cancelled.

The Examiner has rejected claims 54 and 57 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. The Examiner asserted that claims 54 and 57 recite a limitation to cells sorted into monoclonal or polyclonal subgroups based on their different levels of expression of said marker peptide, which is not supported by the written description. In response, claims 54 and 57 are amended to eliminate the terms

"polyclonal" and "monoclonal" and to recite that the claims have a limitation to cells sorted into subpopulations based on levels of the marker polypeptide expression. The amendments to claims 54 and 57 are fully supported by the written description. For example, on page 16 of the published application, in paragraph 0178, the applicants disclose that the entire population of cells with measurable levels of marker protein expression can be fractioned into subpopulations of cells, wherein each subpopulation comprises of cells with similar levels of marker protein expression. Further more, in paragraphs 0108 through 0109 of the published application, the applicants teach in detail how to fraction cells into subpopulations based on levels of the marker peptide expression by using a number of sorting methodologies, which may include, for example, Fluorescence Activated Cell Sorting (FACS).

In view of the foregoing arguments and amendments, the rejection of claims 54 and 57 under 35 U.S.C. § 112, first paragraph, may be properly withdrawn.

C. The Rejections Under 35 U.S.C. § 112, Second Paragraph, Should Be Withdrawn

The Examiner has rejected claims 54 and 57 as allegedly been indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as their invention for reasons similar to those set out above.

The applicants submit that the rejection is moot because the claims have been amended as described above to eliminate the terms "polyclonal" and "monoclonal".

As discussed above, sorting subpopulations of cells based on levels of the marker polypeptide expression is fully supported by the instant specification. The applicants respectfully submit that amended claims 54 and 57 specifically point out and distinctly claim the

subject matter which applicants regard as their invention and submit that the rejection of claims 54 and 57 under 35 U.S.C. § 112, second paragraph, may be properly withdrawn.

Conclusion

In view of the foregoing amendments and remarks, the applicants respectfully submit that the claims are now in condition for allowance and early notification thereof is earnestly solicited.

Respectfully submitted,

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